

9 FAM 42.33 Notes

(TL:VISA-191; 05-07-1999)

9 FAM 42.33 N1 Background

(TL:VISA-185; 02-26-1999)

a. Sec. 131 of the Immigration Act of 1990 (Pub. L. 101-649) amended INA 203 to provide for a new class of immigrants known as “diversity immigrants” to establish a basis for “new seed” immigration. The amendment established an annual numerical limitation of 55,000 diversity immigrants effective for fiscal year 1995 and thereafter. Aliens who are natives of countries determined by the Attorney General through application of a mathematical formula specified by the law may compete for immigration under this limitation. The law requires a separate registration for each fiscal year.

b. The law apportions immigrant visa issuance under INA 203(c) among six geographic regions. [See 9 FAM 42.33 Exhibit I.] The formula identifies both high and low regions and high and low admission foreign states. A greater share of the available visa numbers goes to low admission regions. High admission states are excluded from the program.

c. In November 1997, Congress passed the Nicaraguan Adjustment and Central American Relief Act (NACARA). With NACARA, Congress stipulated that beginning with DV-99, and as long as necessary, 5,000 of the 55,000 annually-allocated diversity visas will be made available for use under the NACARA program.

9 FAM 42.33 N2 Requirements for Diversity Immigrant Program

(TL:VISA-185; 02-26-1999)

To qualify under INA 203(c) as a diversity immigrant the following requirements must be met:

(1) The alien must be a native of [see 9 FAM 42.33 N4.2] or chargeable to a diversity country [see 9 FAM 42.33 Exhibit I]; and

(2) The alien must have at least a high school education or equivalent [see 9 FAM 42.33 N7]; **OR**

(3) The alien must have, within five years of the date of application for a diversity immigrant visa under INA 203(c), at least two years of work experience in an occupation which requires at least 2 years of training or experience. [See 9 FAM 42.33 N8.]

9 FAM 42.33 N3 Diversity Countries

9 FAM 42.33 N3.1 Formula

(TL:VISA-185; 02-26-1999)

a. The Attorney General is required to determine total admissions of preference and immediate relative immigrants over the most recent five-year period for which statistics are available, worldwide total, by region, and by individual foreign state. Using these figures, the Attorney General is to identify both high admission regions and high admission foreign states. A high admissions region is a region whose admission total is greater than one-sixth of the worldwide total. A foreign state whose admissions total is greater than 50,000 is a high admission foreign state.

b. Using available estimates, the Attorney General must then determine the population of each of the six regions (excluding the population of any high admission foreign state) and use those totals to determine the apportionment of the 50,000 worldwide limitation. Quotas for the six regions will be established. Natives of these regions compete for that portion of the total established for that region. Any unused portion of a regional quota is distributed proportionally among the other regions. High admission states are excluded entirely from the apportionment and there is a limit of 3,500 on the use of visas by natives of any single foreign state.

9 FAM 42.33 N3.2 Qualifying Countries

(TL:VISA-175; 01-15-1998)

INA 203(c) provides that the number of visas made available to natives of high admission countries is zero. Department regulations, therefore, prohibit natives of such countries from competition for diversity visas. INS will determine annually the high admission countries based on the total number of admissions for the most recent five-year period. By application of the formula, most countries of the world have been found to qualify as diversity countries. [See 9 FAM 42.33 Exhibit I.] The INS will annually provide the figures to apply the formula, so the list is subject to change annually.

9 FAM 42.33 N4 Native

9 FAM 42.33 N4.1 Regulatory Definition

(TL:VISA-185; 02-26-1999)

"Native" ordinarily means both someone **born** within a particular country, regardless of the individual's current country of residence or nationality. "Native" can also mean someone entitled to be "charged" to a particular country under the provisions of INA 202(b). [See 9 FAM 40.1(I) Regs/Statutes.]

9 FAM 42.33 N4.2 Chargeability

(TL:VISA-185; 02-26-1999)

As stated in the regulatory definition, the normal rules of chargeability apply to INA 203(c) immigrants. [See 9 FAM 40.1(l) Regs/Statutes.] Many applicants may seek beneficial treatment from the rules of cross chargeability, as in the following examples:

(1) A spouse or child born in a country which is not among those for which DV visas are available may use the principal registrant's chargeability when they are accompanying or following-to-join.

(2) A child born in a non-qualifying country in which neither parent was born nor resident at the time of the child's birth, may claim the birthplace of either parent.

(3) A DV applicant born in a country which is not among those for which DV visas are available, and the spouse who was born in a qualifying country, may be issued DV visas, provided the relationship was established prior to submitting the entry. In such instances, however, both applicants are considered principal applicants for the purpose of cross-chargeability and must be issued visas and apply for admission to the United States simultaneously.

9 FAM 42.33 N5 Petitions/Applications

9 FAM 42.33 N5.1 Required Information

(TL:VISA-185; 02-26-1999)

The following elements are **required** for DV applicants. For the purposes of qualifying under INA 203(c) only, an application shall consist of a sheet of paper on which the following items **must** be typed or legibly printed in the Roman alphabet:

(1) **APPLICANT'S FULL NAME**—Last (Surname/Family) Name, First Name and Middle Name;

NOTE: Underline Last Name/Family Name (e.g., Public, George James; or Public, Sara Jane; or Lopez, Juan Antonio);

(2) **APPLICANT'S DATE AND PLACE OF BIRTH**, including city and country, province or other political subdivision, and country (e.g., 15 November 1961, Munich, Bavaria, Germany);

(3) **NAME, DATE AND PLACE OF BIRTH OF THE APPLICANT'S SPOUSE AND CHILDREN;**

(4) **COUNTRY** of which the alien claims to be a native (if other than the country of birth); if the alien is chargeable to a country other than the country of birth this must be clearly indicated. This information **MUST** match with what is put on the upper left corner of the entry envelope.

(5) **APPLICANT'S CURRENT MAILING ADDRESS;**

(6) **PHOTOGRAPH**—A recent (preferably less than six months old) 1½ inch (37 mm) square photograph of the applicant. The applicant's name must be **printed** across the back and taped to the application with clear tape [see also 9 FAM 42.33 PN1.1-2]; and

(7) **SIGNATURE**—The applicant's **original** signature must appear on the DV application form, preferably in the applicable native alphabet. [See also 9 FAM 42.33 PN1.1-1.]

NOTE: Unless ALL of the above information and photograph are on the application form, the application will be disqualified.

9 FAM 42.33 N5.2 Petition/Application Validity

9 FAM 42.33 N5.2-1 General

(TL:VISA-97; 10-20-94)

Under the law, persons registered as diversity immigrants are entitled to apply for visa issuance only during the fiscal year for which the application was submitted. There is no carry-over of benefit into another year for persons who do not receive a visa during the fiscal year for which they registered. Following-to-join derivative visas must be issued during the same fiscal year as that of the principal beneficiary.

9 FAM 42.33 N5.2-2 In Death of Principal Applicant

(TL:VISA-175; 01-15-1998)

The death of the principal beneficiary shall result in the automatic revocation of the application. Derivative beneficiaries are no longer entitled to the DV classification.

9 FAM 42.33 N6 Registration

9 FAM 42.33 N6.1 Registration Dates

(TL:VISA-97; 10-20-94)

The Department shall establish a period for the submission of applications of at least 30 days each fiscal year in which the lottery will be conducted. To ensure wide dissemination of the information both abroad and in the United States, the Department will provide timely notice of both the mailing address and the exact dates of the application period through publication in the *Federal Register* and by other methods.

9 FAM 42.33 N6.2 Number of Applications

(TL:VISA-185; 02-26-1999)

a. Only **one** application by or for each person is allowed during each registration period. Submission of more than one application disqualifies the applicant from registration. Applicants may be disqualified at the time of registration or at the time of interview.

b. The applicant must **personally** sign the entry using his or her normal signature.

c. Husband and wife, if otherwise qualified, may each submit one application. If either is registered, the other is entitled to derivative status.

9 FAM 42.33 N6.3 Form of Submission

(TL:VISA-97; 10-20-94)

Applications must be submitted by normal surface or airmail. The Department will not consider applications submitted by hand, FAX, telegram or any other form of mail requiring special handling.

9 FAM 42.33 N6.4 Envelope Size

(TL:VISA-97; 10-20-94)

Envelopes used for application submissions must be between 6 and 10 inches (15 cm to 25 cm) in length and between 3½ and 4½ inches (9 cm to 11 cm) in width. The National Visa Center (NVC) will not process envelopes **not** conforming to these size restrictions.

9 FAM 42.33 N6.5 Information on Application Envelope

(TL:VISA-175; 01-15-1998)

a. The upper left-hand corner on the front of the envelope **must** contain the following information (as shown on the application):

- (1) Country of chargeability, as shown on the application;
- (2) Applicant's full name; and
- (3) Applicant's complete mailing address;

b. The NVC will not process envelopes that do not bear the above information.

9 FAM 42.33 N6.6 Registration Process

(TL:VISA-175; 01-15-98)

a. The NVC will separate mail received during the designated registration period into one of six geographic regions and number each envelope individually. At the end of the application period, a computer will randomly select cases. Within each region, the first letter randomly selected will be the first case registered, the second letter selected the second registration, etc. All applications received within the mail-in period will have an equal chance of selection within the respective region.

b. When a case is registered, the NVC will immediately send the selected applicant a notification letter with instructions on how to make a formal application. [See 9 FAM 42.33 PN1.5.] **Only registered applicants will be notified.** The NVC will notify applicants during the last three months of the application period.

9 FAM 42.33 N6.7 Principal Registrants Under Age 16

(TL:VISA-185; 02-26-1999)

Although there is NO minimum age for submission of an application for registration, the requirement for a high school education or work experience will effectively disqualify most persons under age 18.

9 FAM 42.33 N6.8 Derivative Status

(TL:VISA-191; 05-07-1999)

Beginning with DV-99 petitions, the NVC is disqualifying entries of registrants who list on their Form OF-230 (Application for Immigrant Visa and Alien Registration) a spouse or child(ren) who was not included in their initial entry. The spouse of a principal alien, if acquired prior to the principal alien's admission, or the child of a principal alien, if the child is the issue of a marriage which took place prior to the principal alien's admission to the United States, although not named on a application, is entitled to derivative DV status.

9 FAM 42.33 N7 “High School Education or Equivalent”

(TL:VISA-97; 10-20-94)

The consular office shall adjudicate the applicant's qualifications under this requirement. In order to gain registration, the alien need not prove that this requirement is met. The applicant must, however, meet this requirement at the time of visa application.

9 FAM 42.33 N7.1 Regulatory Definitions

(TL:VISA-185; 02-26-1999)

The Department's interpretation of the term “high school education or its equivalent” means successful completion of a:

(1) Twelve-year course of elementary and secondary study in the United States; or

(2) Formal course of elementary and secondary education comparable to completion of 12 years elementary or secondary education in the United States. [See 9 FAM 42.33(a)(2) Regs.]

9 FAM 42.33 N7.2 Education Requirements

(TL:VISA-97; 10-20-94)

The Department interprets the phrase “high school education or its equivalent” to apply only to formal courses of study. Equivalency certificates (such as the G.E.D.) are not acceptable. To qualify, an alien must have completed a 12-year course of elementary and secondary education in the United States or a comparable course of study in another country. Evidence might consist of a certificate of completion equivalent to a U.S. diploma, school transcripts, or other evidence issued by the person or organization responsible for maintaining such records which specify the completed course of study.

9 FAM 42.33 N7.3 Education Evaluation

(TL:VISA-191; 05-07-1999)

In an effort to ensure worldwide uniform implementation of the education requirements, the Department has provided posts with "Foreign Education Credentials Required for Consideration of Admission to Universities and Colleges in the United States."

9 FAM 42.33 N8 “Work Experience”

9 FAM 42.33 N8.1 No Labor Certification

(TL:VISA-185; 02-26-1999)

The labor certification requirement of INA 212(a)(5) does not apply to applicants applying as diversity immigrants. Applicants, however, who do not meet the education requirement must meet the work experience requirement of two years of experience in an occupation which requires at least two years training or experience within the five-year period immediately prior to application.

9 FAM 42.33 N8.2 Work Experience Evaluation

(TL:VISA-185; 02-26-1999)

a. If an applicant does not have the equivalent of a high school education, consular officers will evaluate work experience. To ensure uniformity in determining whether the particular occupation is one “which requires at least two years of training or experience”, The *“Dictionary of Occupational Titles”* (DOT), published by the Employment and Training Administration, U.S. Department of Labor, shall be controlling. Page 1009 of the DOT defines the specific vocational preparation (SVP) rating as the amount of time required by a typical worker to learn the techniques, acquire the information and develop the facility needed for average performance in a specific job. An SVP rating of “7” is defined as over two years and up to four years. The Department has decided that only jobs in the DOT with an SV-7 rating or better will meet the statutory work experience requirement.

b. There are three factors to consider when evaluating work experience in lieu of education requirements:

- (1) Does the applicant’s occupation meet the training and experience requirements for that occupation as described by the DOT?
- (2) Does the occupation have a “SV-7” rating or higher?
- (3) Does the applicant have two years experience in that occupation within the five years immediately preceding the visa application?

9 FAM 42.33 N9 Ineligibility Grounds

(TL:VISA-191; 05-07-1999)

With the exception of INA 212(a)(5), applicants are subject to all grounds of ineligibility specified in the Immigration and Nationality Act. There are no special provisions for a waiver of any ground of visa ineligibility other than those ordinarily provided in the INA.

9 FAM 42.33 N9.1 Public Charge

(TL:VISA-185; 02-26-1999)

While Congress has imposed new stringent public charge requirements on many categories of immigrants, including the need to use the new legally binding Affidavit of Support (Form I-864), the DV category is not one of them. Although no affidavit of support is required, applicants may wish to provide one. DV applicants must meet the public charge category by demonstrating that they:

- (1) Are self-supporting;
- (2) Have sufficient skills and/or education to find employment with relative ease; or
- (3) Have family/friends, in the United States or elsewhere, who will support them upon their arrival in the United States.

9 FAM 42.33 N9.2 Waivers

(TL:VISA-185; 02-26-1999)

Unlike applicants eligible for immigrant visas under other programs involving random selection, no special provisions have been made for a waiver of any ineligibility grounds for applicants entitled to DV registration. The regular ineligibility waiver provisions of the INA, including 212(e), all apply.

9 FAM 42.33 N10 Fee

(TL:VISA-185; 02-26-1999)

There is no fee for submitting the initial request for registration in the DV program. However, those applicants who are selected and processed for DV visas will be required to pay a special DV processing fee. [See 9 FAM 42.33 N10.1 below.]

9 FAM 42.33 N10.1 Collection of Fee

(TL:VISA-175; 01-15-1998)

Section 636 of Pub. L. 104-208, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, authorized the Department to collect a fee for the processing of diversity immigrant visas. This fee is in addition to the normal immigrant visa processing and issuance fees, and the amount is specified in the Schedule of Fees. [See 9 FAM PART IV Appendix C, 200 Exhibit I.] Posts shall collect the processing fee at the time of the applicant's formal interview.

9 FAM 42.33 N10.2 Refund of Fee

(TL:VISA-175; 01-15-1998)

The DV processing fee is not refundable. However, posts can advise potentially unqualified applicants during the prescreening that they do not appear to qualify. They should be given the opportunity to withdraw their application and not be required to pay the fee. If, however, they still elect to pursue the visa, applicants must pay all the visa fees.

9 FAM 42.33 N10.3 Processing Cases to Conclusion

(TL:VISA-191; 05-07-1999)

The Department can appreciate posts' efforts to prescreen applications allowing unqualified applicants to withdraw their applications to avoid paying the required fee. Nevertheless, it is important to process such cases to conclusion and not to simply allow the candidate to withdraw the application. Instances have arisen where DV winners who were advised not to make an application at a post abroad have then entered the United States and requested adjustment of status processing at INS.

9 FAM 42.33 N11 Numerical Control

(TL:VISA-158; 11-25-96)

Centralized control of the DV numerical limitation shall be with the Department. [See 9 FAM 42.51.]